

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 Allegiant Travel Company,
5 Plaintiff,
6 v.
7 R2 Solutions LLC,
8 Defendant.

Case No. 2:22-cv-00828-CDS-BNW

ORDER

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10 Before the Court is Plaintiff's motion to seal its response to Defendant's motion to stay
11 discovery.¹ ECF No. 47. Defendant responded at ECF No. 49.

12 Plaintiff explains that while it does not believe there is a need to seal the response, it
13 believes Defendant will argue otherwise. Indeed, Defendant maintains that the information in
14 question is subject to a confidentiality agreement and that disclosure of this information would
15 cause it competitive harm.

16 **I. Analysis**

17 Generally, the public has a right to inspect and copy judicial records. *Kamakana v. City &*
18 *Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). Such records are presumptively publicly
19 accessible. *Id.* Consequently, a party seeking to seal a judicial record bears the burden of
20 overcoming this strong presumption. *Id.* In the case of dispositive motions, the party seeking to
21 seal the record must articulate compelling reasons supported by specific factual findings that
22 outweigh the general history of access and the public policies favoring disclosure, such as the
23 public interest in understanding the judicial process. *Id.* at 1178-79. The Ninth Circuit has further
24 held that the full presumption of public access applies to technically non-dispositive motions and
25 attached documents as well, if the motion is "more than tangentially related to the merits of the
26 case." *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101 (9th Cir. 2016).

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28 ¹ The unredacted and sealed version of Plaintiff's response to Defendant's motion to stay discovery is at ECF No. 46. Defendant filed a redacted version of the document at ECF No. 49-1.

1 Among the compelling reasons which may justify sealing a record are when such court
2 files might have become a vehicle for improper purposes, such as the use of records to gratify
3 private spite, promote public scandal, circulate libelous statements, or release trade secrets.
4 *Kamakana*, 447 F.3d at 1179 (quotation omitted). However, avoiding a litigant’s embarrassment,
5 incrimination, or exposure to further litigation will not, without more, compel the court to seal its
6 records. *Id.*

7 “[A] different standard applies to ‘private materials unearthed during discovery,’ as such
8 documents are not part of the judicial record.” *Pintos*, 605 F.3d at 678 (citing *Kamakana*, 447
9 F.3d at 1180). Under Rule 26(c), a court may enter a protective order “to protect a party or person
10 from annoyance, embarrassment, oppression, or undue burden or expense.” “The relevant
11 standard for purposes of Rule 26(c) is whether good cause exists to protect the information from
12 being disclosed to the public by balancing the needs for discovery against the need for
13 confidentiality.” *Pintos*, 605 F.3d at 678 (quotation omitted). Given the “weaker public interest in
14 nondispositive materials,” the court applies the good cause standard in evaluating whether to seal
15 documents attached to a nondispositive motion. *Id.* “Nondispositive motions ‘are often unrelated,
16 or only tangentially related, to the underlying cause of action,’ and, as a result, the public’s
17 interest in accessing dispositive materials does ‘not apply with equal force’ to non-dispositive
18 materials.” *Id.* (citing *Kamakana*, 447 F.3d at 1179). It is within the court’s discretion whether to
19 seal documents. *Id.* at 679.

20 Here, although the response in question is related to a non-dispositive motion, it discusses
21 many of the same issues discussed in the Defendant’s motion to dismiss. In that sense, the
22 document in question is more than tangentially related to the underlying cause of action. As a
23 result, the Court applies the compelling reason standard. *Ctr. for Auto Safety*, 809 F.3d at 1099.

24 While there is much discussion about the confidentiality agreement governing the
25 materials sought to be sealed, the party who designates a particular document as confidential is
26 still required to meet the legal standard authorizing sealing by making a particularized showing
27 why the document(s) or redacted portion thereof should be sealed. Parties “may not simply rely
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1 on the Stipulated Protective Order . . . to justify sealing documents filed in the record under seal.”
2 *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1133 (9th Cir. 2003).

3 As explained in previous orders, Defendant made a particularized showing regarding the
4 need to seal the information in question. This showing meets the compelling reasons standard. As
5 explained by Defendant, a failure to seal this information would cause it competitive harm. The
6 information in question contains Defendant’s licensing strategy and includes its selection of
7 patents for discussion and claim charting. Courts have found that “confidential business
8 information” in the form of “license agreements, financial terms, details of confidential licensing
9 negotiations, and business strategies” satisfies the compelling reasons standard. *See, e.g., Exeltis*
10 *USA Inc. v. First Databank, Inc.*, No. 17-CV-04810-HSG, 2020 WL 2838812, * 1 (N.D. Cal.
11 June 1, 2020). As a result, Plaintiff’s motion at ECF No. 47 will be granted.

12 **I. CONCLUSION**

13 **IT IS THEREFORE ORDERED** that Plaintiff’s Motion to Seal at ECF No. 47 is
14 **GRANTED**. The Clerk of Court is directed to maintain ECF No. 46 under seal.

15 **IT IS FURTHER ORDERED** that Defendant shall file the document at ECF No. 49-1
16 on the docket as a stand-alone document and link it to its Motion to Stay Discovery within 10
17 days of this Order.

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19 DATED: October 6, 2022

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21 BRENDA WEKSLER
22 UNITED STATES MAGISTRATE JUDGE
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